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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JOHN PELS, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

KEURIG DR. PEPPER. INC.,

Defendant.

Case No. 3:19-cv-03052-SI

**PLAINTIFF'S REQUEST FOR  
JUDICIAL NOTICE IN OPPOSITION  
TO MOTION TO DISMISS AMENDED  
CLASS ACTION COMPLAINT**

Date: October 18, 2019  
Time: 10:00 a.m.  
Courtroom: 1, 17th Floor  
Judge: Hon. Susan Illston

Plaintiff John Pels (“Plaintiff”) respectfully requests that the Court take judicial notice of two documents attached as Exhibits A and B to the Declaration of Willem F. Jonckheer, (“Jonckheer Decl.”). Exhibit A consists of a true and accurate copy of the various Peñafiel spring waters and other Peñafiel flavored beverages sold by Defendant as they appear on the company’s website at <https://www.drpeppersnapplegroup.com/brands/penafiel>. Exhibit B is a true and accurate copy of FDA Import Alert 29-02, dated August 16, 2019, advising districts to detain, without physical examination, certain Peñafiel products due to inorganic arsenic content. The Peñafiel products listed on the FDA Import Alert are “Mineral Water” and “Carbonated Water.” (This document is also available at [http://www.accessdata.fda.gov/CMS\\_IA/importalert\\_97.html](http://www.accessdata.fda.gov/CMS_IA/importalert_97.html).) Exhibit B constitutes an extension of the Import Alert first put into place by the FDA in 2015. (*See*, Cplt. ¶22).

These Exhibits are judicially noticeable under Federal Rule of Evidence 201 because their content is “not subject to reasonable dispute.” Fed. R. Evid. 201(b). Accordingly, the Exhibits are appropriate for judicial notice in connection with Plaintiff’s Opposition to Defendant’s Motion to Dismiss.

### **ARGUMENT**

Rule 201 governs whether the Court should take judicial notice of the two Exhibits. Exhibit A, a copy of the Defendant’s website page showing the types of Peñafiel spring water sold by the Defendant, may be judicially noticed under Evidence Rule 201(b)(2), because the list of Peñafiel spring water is a list published by Defendant. Accordingly, this list “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).

Furthermore, the Court may take judicial notice of the contents of a public website. *See Matthews v. Nat’l Football League Mgmt. Council*, 688 F.3d 1107, 1113 (9th Cir. 2012); *Turner v. Samsung Telcoms. Am., LLC*, No. CV 13-00629-MWF (VBKx), 2013 U.S. Dist. LEXIS 198631, at \*4 (C.D. Cal. Nov. 4, 2013) (“It is not uncommon for courts to take judicial notice of factual information found on the world wide web.”). Indeed, courts in this district have routinely found that websites and their contents may be judicially noticed. *See, e.g., Caldwell v. Caldwell*, 05-cv-4166-PJH, 2006 U.S. Dist. LEXIS 13688, at \*4 (N.D. Cal. Mar. 13, 2006) (“as a general matter, websites

1 and their contents may be proper subjects for judicial notice”). Here the information that Plaintiff  
 2 seeks to have the Court take judicial notice of is not disputed.

3 Exhibit B, the Import Alert, is a document published by the FDA. An import alert is part of  
 4 an FDA program used to protect the country from the import of harmful food and drugs and is set  
 5 forth in detail in Chapter 9 of the FDA Regulatory Procedures Manual, which may be found at  
 6 <https://www.fda.gov/media/71776/download>. The FDA action is not subject to reasonable dispute  
 7 and can be accurately and readily determined from sources whose accuracy cannot reasonably be  
 8 questioned. Fed. R. Evid. 201.

9 Courts in this circuit routinely admit FDA materials pursuant to Evidence Rule 201. *See*,  
 10 *e.g.*, *United States ex rel. Modglin v. DJO Global Inc.*, 48 F. Supp. 3d 1362, 1381-82 (C.D. Cal.  
 11 2014) (finding court may take judicial notice of public records and government documents available  
 12 from reliable sources on the Internet, such as websites run by government agencies, and taking  
 13 judicial notice of numerous FDA documents); *Alton v. Medtronic, Inc.*, 970 F. Supp. 2d 1069, 1075-  
 14 76 (D. Or. 2013) (court took judicial notice of various FDA documents); *Eidson v. Medtronic, Inc.*,  
 15 981 F. Supp. 2d 868, 878-9 (N.D. Cal. 2013) (“The Court finds that because all of the documents at  
 16 issue appear on the FDA’s public website, they may be judicially noticed.”).

### 17 CONCLUSION

18 For the foregoing reasons, Plaintiff respectfully requests that the Court take judicial  
 19 notice of Exhibits A and B to the Jonckheer Declaration.

20  
 21 DATED: September 9, 2019

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 23 By: /s/ Robert C. Schubert  
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